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COMMITTEE AGAINST TORTURE

Twentieth session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 333rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 13 May 1998, at 3 p.m.

Chairman: Mr. BURNS

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* The summary record of the closed part of the meeting appears as document CAT/C/SR.333/Add.1.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Second periodic report of Peru (continued) (CAT/C/20/Add.6):

Conclusions and recommendations of the Committee

1. At the invitation of the Chairman, Mr. Chávez Basagoitia (Peru) resumed his place at the Committee table.

2. Mr. CAMARA (Country Rapporteur) read out the conclusions and recommendations of the Committee concerning the second periodic report of Peru, in French:

"1. The Committee considered the second periodic report of Peru (CAT/C/20/Add.6) at its 330th, 331st and 333rd meetings, held on 12 and 13 May 1998 (see CAT/C/SR.330, 331 and 333) and adopted the following conclusions and recommendations:

A. Introduction

2. The Committee welcomes the submission of the second periodic report of Peru which, despite the six-year delay, nonetheless reflects the manifest wish of the State party to maintain dialogue.

3. The Committee also appreciates the fact that the size, quality and highly representative nature of the delegation of Peru has shown its interest in the work of the Committee.

B. Positive aspects

4. Peru's willingness to give effect to the recommendations that the Committee put forward during the consideration of the State party's initial report.

5. The abolition of the 'faceless judges' system.

6. The introduction into Peruvian legislation of a definition of torture consistent with the provisions of article 1 of the Convention.

7. The planned or actual reforms announced by the Minister of Justice, who headed the delegation of Peru, and which are designed to improve the human rights situation in the framework of the fight against terrorist violence and to reaffirm the independence of the judiciary.

C. Factors and difficulties impeding the application of the provisions of the Convention

8. The Committee finds no factors or difficulties impeding the effective application of the Convention by the State of Peru.

D. Subjects of concern

9. The frequent and numerous allegations of torture.

10. The maintenance of the competence of military courts to try civilians.

11. The excessive role still assigned to military courts at the expense of civil courts.

12. The laws passed between 1995 and 1998, which arguably seem designed as a renewed challenge to the independence of the judiciary:

(a) Act No. 26546 of 26 November 1995 establishing the Executive Commission of the judiciary.

(b) Act No. 26623 of 19 June 1996 reorganizing the Office of the Public Prosecutor and establishing the Executive Commission of the Office of the Public Prosecutor.

(c) Act No. 26695 of 3 December 1996 establishing temporary benches at the Supreme Court and 'higher courts'.

(d) Act No. 26933 of 12 March 1998 limiting the powers of the National Council of the Judiciary.

13. The maintenance of emergency legislation hardly conducive to respect for human rights in general and the elimination of torture in particular.

14. The practice of enacting amnesty laws which in effect accord impunity to persons guilty of torture, in violation of many provisions of the Convention.

E. Recommendations

15. While noting and welcoming the new measures that have been taken or announced, including some which are in the spirit of the recommendations made during the consideration of Peru's initial report, the Committee reiterates those recommendations and calls on the State party to expedite reforms designed to establish a State genuinely founded upon the rule of law.

16. The State party should consider repealing laws which may undermine the independence of the judiciary, and take account of the fact that, in this area, the competent authority with regard to the selection and careers of judges should be independent of the Government and the administration. To guarantee such independence, measures should be taken to ensure, for example, that the members of that authority are appointed by the judiciary and that the authority itself decides on its rules of procedure.

17. The State party should consider, pursuant to articles 6, 11, 12, 13 and 14 of the Convention, taking measures to ensure that victims of torture or other cruel, inhuman or degrading treatment, and their legal successors, receive redress, compensation and rehabilitation in all circumstances."

3. Mr. CHÁVEZ BASAGOITIA (Peru) said that he had taken note of the Committee's conclusions and recommendations and that written comments would be forwarded to the Committee at a later date. On behalf of the Minister of Justice he thanked the Committee for the climate of confidence and fruitful dialogue.

4. Mr. Chávez Basagoitia (Peru) withdrew.

The meeting was suspended at 3.20 p.m. and resumed at 3.30 p.m.

Third periodic report of Panama (continued) (CAT/C/34/Add.9)

5. At the invitation of the Chairman, Mr. Sáenz Fernandez, Mr. Kam Binns and Mr. Bonaga (Panama) resumed their places at the Committee table.

6. Mr. SÁENZ FERNANDEZ (Panama) said that there was no need to adopt additional legislation to ensure implementation of the Convention in Panama; under article 4 of its Constitution, Panama was obliged to apply the provisions of the conventions to which it was a party. Supreme Court rulings in 1991 and 1993 had further underlined the fact that international conventions and treaties ratified by Panama became part of the body of law of the Republic immediately after ratification. Courts were therefore bound to enforce the provisions of the Convention.

7. Under article 2038 of the Judicial Code, nobody could be held incommunicado at any time. Detainees were entitled to see a lawyer immediately after their arrest.

8. Acts of torture or ill-treatment could not in any circumstances be justified by the fact that the perpetrator was following the orders of his superior officer. Where possible, both the perpetrator and the officer who had issued the order were prosecuted.

9. Extradition could be refused if the appropriate legal requirements had not been met by the country requesting it and in many other cases which were set out in the report. In November 1996, 88 Colombians who had been refugees in Panama had been sent back to their country of origin, but only after the appropriate legal proceedings had run their course, including consultations with the Colombian authorities which had resulted in an agreement and an assurance that the refugees would run no risk whatsoever by returning to their homes. There were no reports that the agreement had been violated in any way.

10. Paragraph 41 of the third periodic report (CAT/C/34/Add.9) stated that penalties for torture or other ill-treatment ranged from six months to five years. However, the new Penal Code that was being drafted laid down harsher penalties for such behaviour.

11. The fact that bail was not granted to persons accused of offences against individual freedom, accompanied by torture or other ill-treatment, did not conflict with the idea of a person being innocent until proved guilty.

12. The crime of torture, which was recognized as a punishable act under Panamanian legislation, was considered an offence for which the Republic of Panama could grant extradition. It was gratifying to note, however, that in the period since the second periodic report of Panama (CAT/C/17/Add.7) had been submitted there had been no request for extradition relating to allegations of torture.

13. A member of the Committee had asked at what stage in the legal proceedings prison visits were made by judges, magistrates, prosecutors and penitentiary system officials. Visits were made once a month at all stages: during pre-trial proceedings, the intermediate period and the trial proper. Each inmate received individual attention and was provided with all relevant information regarding the date set for hearings and the status of the proceedings. The detainee was free to ask questions and file complaints and petitions.

14. The National Correction Department at the Ministry of Justice was the responsible authority for the enforcement of sentences. However, the system was antiquated and very laborious. In some cases the formalities involved the entire hierarchy right up to the President of the Republic. The preliminary draft Penal Code provided for a magistrate with specific responsibility for the enforcement of sentences who would be appointed through a competitive procedure and would not form part of the executive but of the judiciary. His duties would include: supervision of detainees' files and records to ensure that they were released on completion of their sentences or, alternatively, released on parole; and establishment, on the basis of studies by the interdisciplinary board, of working hours for service outside the place of detention.

15. Representatives of the Panamanian Human Rights Committee were authorized to visit prisons without prior notification. Representatives of the National Bar Council and of non-governmental organizations (NGOs) concerned with the proper functioning of places of detention were also admitted and allowed to converse with the inmates. Detainees were entitled to weekend family visits and the relatives of detainees were free to make suggestions and lodge complaints.

16. The preliminary draft amnesty law had been scrapped at a very early stage owing to opposition from the judiciary, the National Bar Council and the general public.

17. With regard to the NGO report concerning an incident in 1996in which the police had allegedly used firearms, the National Police operated a centre (Oficina de Responsibilidad Patrimonial) that investigated all complaints regarding human rights violations. The Office of the Public Prosecutor could also initiate an investigation under articles 1965 and 1966 of the Judicial Code. He could not recall the case in point but assured the Committee that

all such cases were investigated by one of the bodies with jurisdiction in that area. Legal proceedings were currently under way against a number of National Police officers accused of punishable acts.

18. Prison guards received instruction in the provisions of the Convention and other human rights instruments and courses were tailored to the intellectual level and assimilative capacity of the participants. Officers of the criminal investigation service (Policia Judicial) were trained in interrogation and investigation theory and techniques not only by national experts but also by visiting lecturers from Canada, the United States and Spain.

19. A member of the Committee had commented on the number of persons in pre-trial detention. In 1996, the High Commissioner for Human Rights had been informed during a visit to the country that only 10 per cent of detainees had been tried and convicted. The overcrowded "Modelo" prison had since been closed down and steps had been taken to reform the administration of justice, especially through the adoption of Act No. 93 of December 1997. Under the new law, detainees who had spent a period in pre-trial detention equal to the prison term to which they were liable must be released forthwith. Detainees who had been acquitted must be released immediately even if an appeal was pending. Persons held in preventive detention on charges relating to drug offences were released subject to certain conditions such as prohibition from leaving the country without permission or requirement to reside within a certain geographical area. Act No. 1 of 1995 simplified legal proceedings. Panama had begun implementing provisions of the model code of criminal procedure for Latin America concerning preliminary hearings, direct proceedings and abridged proceedings. During preliminary hearings, magistrates must deliver a ruling as soon as the pleadings, which could not last for more than 30 minutes, had been completed. On receiving the record relating to a case, judges must set a date for the hearing within 45 days. The courts had been regrouped: for example, the 15 courts of the first circuit in Panama City had been divided into groups of five, each of which had an assigned defence counsel and two prosecutors to prevent recurrence of the delays due to the rota system. A detainee could also opt for a direct trial, which would take place at the earliest possible opportunity and would offer the possibility of a reduction of the penalty incurred by up to one third. Article 1974 of the Judicial Code provided for an amicable settlement between the victim and perpetrator for certain offences provided that the victim received appropriate compensation. In his view, by the end of 1998 a significant reduction in the number of persons held in pre-trial detention would have been achieved.

20. With regard to the individual who had been sentenced to a prison term of 8 years and had already spent 10 years in pre-trial detention, he stressed that such cases were very exceptional and might arise, for example, when defence counsel in a criminal case used a variety of procedural tactics provided for in the Code of Criminal Procedure for the postponement of a hearing. Only one postponement would henceforth be permitted. As from 1999, contumacious proceedings - trials of persons in their absence - would no longer be permitted because they led to delays in the trial of other cases.

21. The National Correction Department was the authority that decided when a person serving a prison sentence was to be released. In the case of persons held in preventive detention, release was ordered by the judge dealing with the case.

22. Prison work was voluntary, both for pre-trial detainees and for convicted prisoners. Although participation in prison work programmes in no way affected the presumption of innocence in the case of persons in pre-trial detention, it was nevertheless perceived by the detainees themselves as incompatible with their status. Detainees received remuneration for their work: one portion was kept for private expenses, another was paid into a savings account, and the remainder was remitted to their families.

23. He would include the Committee's suggestion that Panama should make a contribution to the United Nations Voluntary Fund for Victims of Torture in his report to the authorities concerned.

24. With regard to article 2, paragraph 2, of the Convention, he drew attention to paragraph 100 of the core document (HRI/CORE/1/Add.14/Rev.1) containing a quotation from article 51 of the Constitution, which provided for the possibility of suspending certain constitutional guarantees, including those provided for under article 28 concerning the prison system, during a state of emergency. With regard to the question whether the suspension of the guarantees under article 28 was consistent with the application of article 21 concerning due process and article 22 concerning the presumption of innocence and the right to legal counsel, a relevant case had been referred to the Supreme Court in 1987 when a member of the army chief of staff had resigned, levelling charges against other members. The ensuing political crisis had led to the partial suspension of certain articles of the Constitution. The Supreme Court, in a mandatory constitutional statement, had ruled that even in a state of emergency the principles governing the prison system, in particular the presumption of innocence and the right to counsel, could not be violated since they constituted a universal norm that transcended all domestic legislation. The Court had also ruled in 1993 that the American Convention on Human Rights, ratified through Act No. 15 of 1977, article 8 of which laid down, inter alia, the principles of presumption of innocence and due process formed part of the constitutional core and could not be suspended.

25. Where a public official committed an offence and incurred civil liability, the State was held to be responsible. In a recent case in which a former officer of the defence forces had been found guilty of torture and sentenced, the State had been obliged to pay damages. Furthermore, under a recent bill drafted on the initiative of the President of the Supreme Court, the State would not only be required to pay damages but also to defray any medical costs in cases where the perpetrator of an offence was insolvent.

26. Mr. KAM BINNS (Panama) thanked the Committee for its encouragement, which would motivate the State party not just to submit better reports but also, in daily practice, to enhance the fulfilment of its international obligations under the Convention. In recent years Panama had been developing several initiatives in accord with the United Nations, including the creation of the new institution of the office of the People's Advocate. That was an example of how, with international cooperation, Panama was attempting to deal

with some very serious problems. With the cooperation of the former Centre for Human Rights, it was also working on a project for training police in the field of human rights, which was being financed entirely by the Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights and was aimed in part at improving the professionalism of the police and their observance of human rights and fundamental freedoms. Recommendations resulting from the first stage of the project, which had already been completed, included new training courses, not just on general aspects of human rights but also on torture, the rights of the child and domestic violence. In addition, the Government of Spain had sponsored a very important project on police training in the field of human rights, which complemented other regional efforts.

27. Regarding Panama's difficulties in expediting criminal proceedings, and the slowness of the judiciary, the Government had recently negotiated an initial loan of $18 million with the Inter-American Development Bank for making the administration of justice more efficient, transparent and honest. The loan was part of the second wave of reforms in Panama; the first wave had concerned privatization, competition and other aspects relating to globalization and the economic structure, while the second wave dealt with such matters as the administration of justice and combating corruption.

28. Panama would gladly make an effort to contribute to the United Nations Voluntary Fund for Victims of Torture. The country had much faith in international cooperation, from which it had benefited and to which it therefore had a moral duty to contribute. However, as was the case with the Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights, its contribution would be little more than a token one, owing to the difficult economic situation it faced, like other developing countries.

29. The presence of his delegation was an expression of the wish of the new Government that had taken office in September 1994 to develop a broad, transparent, comprehensive policy in the field of human rights, one which was closely related to international cooperation. Panama's actions within the United Nations system since then had all been aimed at strengthening that policy. He hoped that in the next millennium, better relations among people would do away with the need for the Committee against Torture and other treaty-monitoring bodies.

30. Mr. GONZALEZ POBLETE (Country Rapporteur) asked what the State party's policy was with regard to asylum and refuge. In the past two years, Panama had admitted more than 200 refugees, most of them from Nicaragua, El Salvador, Cuba and Haiti. He was, however, concerned at the State party's reservations with regard to refugees from Panama's eastern border, and specifically the Colombian region of Urabá, which was a zone of conflict. People from that region risked being exposed to the dangers specified in article 3 of the Convention.

31. Mr. KAM BINNS (Panama) said his country fulfilled its international obligations under the 1951 Convention relating to the Status of Refugees and other relevant international instruments. It had traditionally been a country of asylum and refuge. In addition to the countries of origin mentioned by Mr. González Poblete, Panama had also harboured large numbers of Chileans,

particularly since 1973. The situation of refugees from Colombia, however, was complex, as the conflict in that country was widespread and appeared to cover the entire nation.

32. Panama had perhaps been strict in its granting of refugee status, but that was because in many cases it was a matter not of refugees, but of internally displaced Colombians who, in trying to escape violence at home, had ended up in Panama. Most of them admitted they had come to Panama in search of safety, but had no particular desire to stay there. Unfortunately, Panama had often had to tell them it was unable to guarantee their safety in the places where they had settled, such as Darién, an inhospitable region where security forces were often non-existent or understaffed.

33. Panama did have bilateral cooperation mechanisms with Colombia, notably the Commission on Good Neighbourliness and Integration, in which such topics as refugees were discussed. In addition, the Colombian authorities had identified places where it guaranteed to protect the physical integrity and ensure the reintegration of internally displaced persons returning from Panama. The Office of the United Nations High Commissioner for Refugees (UNHCR) had helped with their repatriation, and there was significant cooperation between Panama and Colombia on the matter. However, the fact that there was not always access to the areas of settlement had indeed, as the media reported, created the impression that forced repatriation was taking place. Concerned about the problem and its international implications, Panama had conferred with the new UNHCR regional director in March 1998 in order to find solutions to the problem, which appeared to be recurrent. Panama was prepared to assume its responsibility towards refugees within the international framework, but the country of origin should also do so, strengthening mechanisms designed to ensure a lasting peaceful solution to the conflict.

34. Panama was willing to continue discussing the matter, which was very sensitive, as the image conveyed was not always one of complying with standards regarding refugees. It was looking for solutions, such as granting provisional refugee status, which other countries, such as Spain, were already doing, and setting up a programme to anticipate such problems and deal better with the displaced Colombians.

35. The delegation of Panama withdrew.

The meeting was suspended at 4.40 p.m. and resumed at 5.35 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Third periodic report of Panama (continued) (CAT/C/34/Add.9)

Draft conclusions and recommendations of the Committee

36. At the invitation of the Chairman, Mr. Sáenz Fernandez, Mr. Kam Binns and Mr. Bonaga (Panama) resumed their places at the Committee table.

37. Mr. GONZÁLEZ POBLETE (Country Rapporteur) read out the conclusions and recommendations of the Committee concerning the third periodic report of Panama, in Spanish:

"The Committee considered the third periodic report of Panama (CAT/C/34/Add.9) at its 332nd and 333rd meetings, on 13 May 1998 (CAT/C/SR.332 and 333) and adopted the following conclusions and recommendations.

A. Introduction

1. Panama ratified the Convention on 24 August 1987. It has not made the declarations provided for in articles 21 and 22 of the Convention.

2. It is also a State party to the Inter-American Convention to Prevent and Punish Torture.

3. The third periodic report covers the period from 21 September 1992, when the second periodic report was submitted, to 19 May 1997.

4. The representative of Panama provided additional information during the oral presentation, particularly regarding events after that period.

5. The Committee appreciates Panama's sending a high-level delegation to present the report and the cordial spirit of the discussions.

B. Positive aspects

1. The Committee has received no reports of cases of torture during the period covered by the report.

2. Panamanian legislation contains appropriate safeguards for the effective protection of human rights and especially the prevention of torture, in particular the maximum period of 24 hours, subject to no exception, within which a detainee must be brought before the competent judicial authority, and the prohibition against holding anybody incommunicado.

3. The establishment of the Office of the People's Advocate.

4. Other positive measures include the provision in the Judicial Code for a system of monthly visits to prison establishments by judges, magistrates and investigating officers and the establishment by the Public Prosecutor's Department of a 'prison mailbox' system to facilitate the exercise by prisoners of their right to lodge complaints and petitions.

5. The implementation of a human rights training project for members of the National Police, and the introduction of a technical course on penology at the Faculty of Law and Political Sciences of the University

of Panama, both of which initiatives seem to demonstrate an intention to professionalize this area of public service.

6. The State authorities' concern for restructuring the Judiciary to improve the performance of its important role in the effective functioning of a State under the rule of law.

C. Subjects of concern

1. The absence in Panama's legislation of a stipulated maximum duration of pre-trial detention.

2. The high proportion of unsentenced detainees in Panama's prisons.

3. Compliance with article 3.1 of the Convention may be jeopardized by the repatriation of refugees coming from neighbouring countries.

D. Recommendations

1. To consider the possibility of making the declaration provided for in article 22 of the Convention.

2. To adopt all necessary safeguards for the protection of refugees from neighbouring countries, in particular so as to ensure that in case of repatriation they are not placed in the situation referred to in article 3.1 of the Convention."

38. Mr. FERNANDEZ (Panama) said that his delegation welcomed the Committee's conclusions and recommendations. They would to a large extent be implemented when the draft Penal Code and Judicial Code, which accorded more closely with the Convention, were enacted. Efforts had always been made to respect the right of asylum and consider the sensitive situation of the Colombian nationals.

39. The CHAIRMAN thanked the Panamanian delegation for its profitable exchange of views with the Committee.

40. The delegation of Panama withdrew.

The public part of the meeting rose at 5.45 p.m.